

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the dependence of claim 32 on claim 28, including new issues under 35 U.S.C § 112, second paragraph regarding antecedent basis.

***Response to Arguments***

Applicant's arguments have been fully considered to the extent that they pertain to the claims now of record but they are not deemed to be persuasive.

Regarding applicant's arguments, it is unclear that the profile of fermentation product necessarily results in greater production of Tiacumicin B as alleged using any microorganism and any absorbent. It is apparent that specific conditions and a specific strain are required to achieve the touted results. This is not the material claimed. See, Specification, Examples.

The declaration presented by applicant has not been considered. Please refer to MPEP §§ 714.12 and 714.13 wherein it is stated that new affidavits or other new evidence should not be entered unless applicant provides "good and sufficient reasons" under 37 CFR § 1.116 or 37 CFR § 1.195 why they were not earlier presented. In the instant case, a first action was sent to applicant with a rejection under 35 U.S.C. 103 wherein the examiner made out a proper *prima facie* case. In response to applicant's argument and amendments, a final rejection was mailed to applicant that repeats the 35 U.S.C. 103 rejection and sufficiently rebuts applicant's arguments by pointing out that a *prima facie* case has been presented and arguments relative to unexpected results are not sufficient in the absence of evidence to support the argument. Now, after final, applicant files a declaration attempting to demonstrate unexpected results so as to overcome the 35 U.S.C. 103 rejection. Applicant gives no reasons as to why the declaration was not earlier presented.

Therefore the rejection is deemed proper and it is adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

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/Irene Marx/  
Primary Examiner  
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